No. 4 Orig.

Supreme Court U.S.
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Motion for Appointment &c.

Supreme Court of the United States.

Filed Nov. 10, 1902.

IN EQUITY.

OCTOBER TERM, 1902.

THE STATE OF MISSOURI,
Complainant,
vs.
THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
Respondents.
No. 4, Original.

MEMORANDUM OF COMPLAINANT IN OPPOSITION TO MOTION OF RESPONDENTS TO DISMISS, AND MOTION OF COMPLAINANT FOR APPOINTMENT OF EXAMINER TO TAKE TESTIMONY.

E. C. CROW,
Attorney General of Missouri.

CHAS. W. BATES,
Of Counsel.

WOODWARD & TIERNAN PRINTING CO., ST. LOUIS.

IN THE

Supreme Court of the United States.

IN EQUITY.

OCTOBER TERM, 1902.

THE STATE OF MISSOURI, *Complainant*, *vs.* THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, *Respondents.*	No. 4, Original.

MEMORANDUM OF COMPLAINANT IN OPPOSITION TO MOTION OF RESPONDENTS TO DISMISS, AND MOTION OF COMPLAINANT FOR APPOINTMENT OF EXAMINER TO TAKE TESTIMONY.

Now comes complainant, by its solicitors, and for its statement and memorandum in opposition to the motion filed herein by respondents to dismiss this cause says, that immediately following the filing of the bill of complaint herein, on or about the 22d day of January,

1900, complainant, by its officers and experts employed for that purpose, began the work of preparing the proof in support of its bill by making systematic collections of samples of water at various points along the Sanitary Canal, the Des Plaines River, the Illinois River and the Mississippi River, between the City of Chicago, in the State of Illinois, and the City of St. Louis, in the State of Missouri, and by analyzing the samples so taken several times each day, which work of analysis was conducted by numerous expert chemists, bacteriologists and microscopists, that such work was conducted and carried on daily and without intermission from sometime in January, 1900, until sometime about the beginning of the summer of 1901, when the same, for reasons not deemed necessary or material to be here stated, was interfered with and for a time and until about the latter part of the summer of 1901 almost suspended.

Complainant further states that on or about the 13th day of May, 1901, counsel then representing it in this cause, to-wit, the Attorney General of the State of Missouri, Hon. Edward C. Crow, and Mr. B. Schnurmacher, met counsel for respondents, namely, the Attorney General of the State of Illinois, the Hon. H. J. Hamlin, Mr. John G. Drennan and Mr. William M. Springer, in the office of the clerk of this court, and said several counsel for the complainant and the respondents believing that the work of preparation by the experts would be sufficiently advanced by the end of the approaching summer to begin the taking of testimony, did then and there enter into a tentative arrangement for the taking of such testimony to begin on or about the 9th day of September, 1901.

Complainant further states that owing to the temporary interruption of said work of collecting daily samples

and analyzing the same, counsel for complainant became satisfied in or about the month of August, 1901, that no good purpose would be served and no expedition in the cause would be subserved by beginning the taking of testimony at the time when it had been deemed appropriate to begin taking of the same, and thereupon Mr. Schnurmacher, of counsel for complainant, did on or about the 21st day of August, 1901, write to the Attorney General of Illinois a communication under said date, advising him of the situation and advising him further that the work of preparation had been resumed and was then in progress, but that it would be impossible to arrive at results by the month of September and that under such circumstances nothing would be gained by the taking of depositions at the time that all parties had hoped the same could be commenced; that said counsel further notified said Attorney General that as soon as the experts were ready with their work he would be advised and that no time would be wasted or unnecessarily lost; that a copy of said communication is hereunto annexed and made a part hereof marked Exhibit "A;" that a letter in all respects similar to said exhibit was also written and forwarded to Mr. Springer and to Mr. Drennan, of counsel for respondents.

That in response to said communication, the Attorney General of Illinois, under date of August 26, 1901, replied to said counsel for complainant suggesting that he realized that under the circumstances stated to him, the parties to this cause would not be able to commence the taking of testimony in September. Said Attorney General thereupon further suggested in his said communication, "that some arrangement be consummated by the parties in interest, of which all parties shall be notified in due season, when and where it is proposed by either

party to procure samples from the waters of the drainage district and the Illinois River, for the purpose of having the same analyzed, and if they so desire procure samples of the same water, at the same time and place, so that they may have equal opportunity of having it analyzed." A copy of said communication is also hereunto annexed and made a part hereof, and is marked Exhibit "B."

That upon the receipt of said communication, said counsel for complainant did respond to the same by saying that so far as he was personally concerned, he thought the suggestion made for the taking of samples of water for analysis by the opposing parties hereto at the same times and places an eminently fair and just one, and that he would at once suggest the same to the officers engaged in said work and secure their concurrence therein; that a copy of said communication is hereunto annexed and forms a part hereof, and is marked Exhibit "C."

That thereupon said counsel for complainant did immediately submit the proposition of the Attorney General of Illinois to the various officers and experts engaged in the said work of collecting samples and analyzing waters aforesaid, and that having obtained their acquiescence in said plan, said counsel did on August 30, 1901, advise said Attorney General thereof and did request him to name the time and place in the City of Chicago when and where the representatives of the Board having charge of the sanitary canal might meet the said experts engaged on the part of complainant, for the purpose of perfecting arrangements to carry out said Attorney General's scheme of work; that a copy of said communication of August 30, 1901, is also here-

unto annexed and forms a part hereof, and is marked Exhibit "D."

That thereupon said Attorney General replied under date of August 31, 1901, stating that he had arranged for a meeting of the experts representing the opposing parties, to be held at the rooms of the Sanitary Board, in the Security Building, in the City of Chicago, at 10 o'clock in the forenoon of Friday, the 6th day of September, 1901; that a copy of said communication is also annexed and forms a part hereof, and is marked Exhibit "E."

Complainant further states that pursuant to said correspondence, a conference did take place as arranged, with the result that the parties agreed upon a plan whereby, instead of taking samples of water at various points between the Cities of Chicago and St. Louis, independently of each other, as they had been theretofore doing, such samples would thereafter be taken at the same points and at the same times, so that the results reached by the experts employed on behalf of the respective parties could be better compared with each other, and so that it might not be claimed, if different results were reached, that the same was due to a difference in conditions existing in samples collected.

That thereupon the experts and employes on behalf of the complainant did carry out the said arrangement thus made and that the work of analysis and of perfecting the reports and the deductions and conclusions thereon has been going forward, without interruption, ever since, and that the reports of the experts based upon the said work are just about reaching completion.

That said work is necessarily of a slow and tedious character and unavoidably and necessarily consumes much time. That until all of the tables of figures

arrived at from said work of analysis were formulated and proper deductions reached therefrom, no time would have been saved to the parties to this cause or to Court by the commencement of testimony, but that the said work of the experts having been once concluded, the taking of their testimony could be begun and continued with expedition, all of which will more fully appear from the affidavits hereunto annexed.

Complainant further states that before prosecuting this cause to a hearing, it desired in good faith to pursue its investigations over a sufficiently extended period to satisfy itself of the merits of its complaint, and that in the making of such investigation there has been expended a large amount of money, to-wit, the sum of upwards of fifty thousand dollars ($50,000.00); that if such work of preparation had disclosed that the fears of complainant, as set forth in its bill, were groundless, complainant had fully intended voluntarily to dismiss its proceeding, but that the contrary result having been demonstrated and the work having now reached the stage where complainant is prepared to take testimony, it now prays that the motion filed herein by respondents be denied and that this Court do now appoint a commissioner or examiner to take testimony, to be used at the hearing of this cause, and do now fix a time within which the parties hereto shall proceed to take such testimony.

EDWARD C. CROW,
Attorney General of Missouri.

CHAS. W. BATES,
Of Counsel.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

Edward C. Crow, of lawful age, being first duly sworn, makes oath and says he has read the foregoing return of plaintiff in opposition to respondents' motion to dismiss this cause; that he was counsel for the plaintiff from the time of the filing of the bill herein and still is counsel for plaintiff; and that to the best of his information, knowledge and belief, the matters and things therein stated are true.

EDWARD C. CROW.

[SEAL]

Sworn to and subscribed before me this eighth day of November, 1902.

WALTER B. DRYDEN,
Notary Public.

My term expires Sept. 18, 1904.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

Benjamin Schnurmacher, of lawful age, being duly sworn, makes oath and says that he has read the foregoing return of complainant in opposition to the motion of respondents to dismiss this cause; that he was of counsel for the complainant from the time of the filing of the bill herein until the 31st day of December, 1901, and is, therefore, familiar with the matters and things in said return or statement set forth, and that to the best of his knowledge, information and belief, the matters and things so stated are true.

B. SCHNURMACHER.

[SEAL]

Sworn to and subscribed before me this eighth day of November, 1902.

WALTER B. DRYDEN,
Notary Public.

My term expires Sept. 18, 1904.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

Amand Ravold, being first duly sworn, deposes and says that he has been a practicing physician in the City of St. Louis since 1881, and has given special study to the science of bacteriology.

That from July, 1899, up to January 1, 1901, he was constantly engaged on behalf of the City of St. Louis in the collection of samples from Lake Michigan,

Chicago Drainage Canal, Illinois and Michigan Canal, Des Plaines River, Illinois River, Mississippi River, Missouri River and water supply of the City of St. Louis, and in making bacteriological examination of these samples for the determination of the bacterial content of said waters; that from August 24, 1901, to September 1, 1902, he was engaged in the same bacteriological investigation.

That from January 1, 1901, to September 1, 1902, in addition to bacteriological investigations he was engaged in the tabulation of bacteriological data obtained, the preparation of diagrams and charts, and the writing of a report, which report was presented to the City Counselor September 2, 1902, and he is now ready to present the evidence gathered by him in the said investigations.

Affiant further states that the analytical work above referred to and the work of collecting and formulating the data resulting therefrom, is necessarily of a slow and tedious character, the various processes being complicated and requiring much time; that his work was expeditiously carried on and that at no period covered by his investigations was any time lost or wasted.

AMAND RAVOLD.

[SEAL]

Sworn to and subscribed before me this eighth day of November, 1902.

WALTER B. DRYDEN,
Notary Public.

My term expires Sept. 18, 1904.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

William C. Teichmann, being first duly sworn, deposes and says that he had practiced analytical chemistry in the City of St. Louis since November, 1890, and has been City Chemist of the City of St. Louis since 1893, principally occupied with water analyses since that time.

That from August, 1899, up to July 1, 1902, affiant has been engaged on the part of the City of St. Louis in a continuous analytical survey of the water supply of the City of St. Louis and of the Mississippi River at the Chain of Rocks near the point where the intake of the water works is located; and at intervals, of water at points in the Missouri River, Des Plaines River, Lake Michigan, Chicago River, Chicago Drainage Canal and the Illinois and Michigan Canal, and Mississippi River from said intake to a point five miles above the mouth of the Illinois River.

That in the prosecution of this work he conducted the analyses of samples of water taken from all the above-named places and from the facts thus obtained collated analytical data and prepared a report of the results and conclusions.

That he has just completed said official report, showing the results of said work and delivered it to the City Counselor of the City of St. Louis November 1, 1902, and affiant is now ready to present the evidence so ascertained by him, but up to this time he has not been so prepared.

Affiant further states that the analytical work above referred to and the work of collecting and formulating

the data resulting therefrom, is necessarily of a slow and tedious character, the various processes being complicated and requiring much time; that his work was expeditiously carried on and that at no period covered by his investigations was any time lost or wasted.

WM. C. TEICHMANN.

[SEAL]

Sworn to and subscribed before me this eighth day of November, 1902.

WALTER B. DRYDEN,
Notary Public.

My term expires Sept. 18, 1904.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

Chas. W. Bates, being first duly sworn, deposes and says that he succeeded Honorable Benjamin Schnurmacher as City Counselor January 1, 1902, and from that time forward has been of counsel in said cause; that since his entering into said cause every effort has been made to prepare the same for hearing upon the issues made upon the pleadings therein.

CHAS. W. BATES.

[SEAL]

Sworn to and subscribed before me this eighth day of November, 1902.

WALTER B. DRYDEN,
Notary Public.

My term expires Sept. 18, 1904.

(EXHIBIT "A.")

(COPY.)

August 21, 1901.

Hon. H. J. Hamlin, Attorney General, Springfield, Ill.:

Dear Sir—Upon the suggestion of Attorney General Crow, who is absent in the East on his summer vacation, I write you at this time in reference to the case of Missouri vs. Illinois and the Sanitary District of Chicago.

When we last met in Washington about the middle of May it was believed by all of us on both sides that matters would be in such shape by September that the taking of testimony could begin in the early part of that month.

Since then, however, the City Chemist and City Bacteriologist of St. Louis have been unavoidably delayed in their investigations and for a time their work was unavoidably suspended altogether. They have now resumed this work and are engaged on it at present, but will be unable to arrive at results by September. Under the circumstances no time would be saved by commencing the taking of the depositions at the time it was hoped to commence.

It is due you to know the situation immediately so as not to disarrange other plans that you may desire to make for September, and it is for that reason that the matter is called to your attention now.

I realize that we are all anxious to dispose of this case upon its merits at the next term of court and feel certain that we can and will do so and that the delay will not be great enough to prevent this.

As soon as the experts are ready, either the Attorney General or I will advise you and no time will be allowed to be wasted or unnecessarily lost.

For their information, I am writing as above to the Hon. W. M. Springer at Washington, and to Mr. Drennan at Chicago.

Very truly yours,

(Signed) B. SCHNURMACHER,
City Counselor.

(EXHIBIT "B.")

(COPY.)

August 26, 1901.

Hon. B. Schnurmacher, City Counselor, St. Louis, Mo.:

Dear Sir—Your letter of the 21st inst. at hand and contents noted. In reply will say that I realize that under the circumstances we would not be able to commence taking testimony in September. I did not know whether you intended to wait until the commissioner was appointed by the Supreme Court at its next session in October or whether you proposed to proceed by notice, etc.

You state that your City Chemist and City Bacteriologist have been unavoidably delayed in their investigation. Believing that all parties in interest are seeking for the truth in the premises and to the end that each may aid the other in that behalf, I would suggest that some arrangement be consummated by the parties in interest, by which all parties shall be notified in due season when and where it is proposed by either party to procure samples from the waters of the Drainage District and the Illinois River for the purpose of having the same analyzed, and if they so desire, procure samples of the same water at the same time and place, so they may have an equal opportunity of having it analyzed.

The Sanitary District trustees agree with me in this arrangement and will notify you of their concurrence.

I hope you will consider this proposition with the kindly spirit in which it is presented, and that I may receive an early reply to the same.

I have to-day submitted a like proposition to Attorney General Crow.

Very respectfully,

(Signed) H. J. HAMLIN,
Attorney General.

(EXHIBIT "C.")

(COPY.)

August 27, 1901.

Hon. H. J. Hamlin, Attorney General, Springfield, Ill.:

Dear Sir—I am in receipt of your favor of the 26th instant in which you suggest that some arrangements be made by which all parties to the Drainage Canal litigation be notified in due season when and where either party proposes to procure samples from the waters of the drainage canal or the Illinois River for the purpose of having the same analyzed; so that if they desire, each may procure samples of the same water at the same time and place and have an equal opportunity of having it analyzed.

So far as I am concerned, I certainly think your suggestion eminently fair, and I will at once suggest it to the Health Commissioner of this city, and to the City Chemist and City Bacteriologist. If the plan is practicable, as I should suppose it to be, I do not doubt but that they will concur therein.

In this connection I may add, that recently I noticed several press dispatches in the newspapers purporting to come from Chicago, and intimating that samples of water were being taken from the Chicago River and the drainage canal in a "surreptitious" manner by employes of this city. I beg to say that at the time mentioned no

samples of water were being taken on behalf of this city. If they had been, however, it would be difficult to understand it what respect this would have been in any way improper.

As soon as I have heard from the officials above named, and from the Attorney General of Missouri, to whom I will also refer your communication, I will advise you further.

Very truly yours,

(Signed) B. SCHNURMACHER,
City Counselor.

(EXHIBIT "D.")

(COPY.)

August 30, 1901.

Hon. H. J. Hamlin, Attorney General, Springfield, Ill.:

Dear Sir—The Health Commissioner, Chemist and Bacteriologist, of this city, called upon me to-day to say that they were not unwilling to enter into some arrangement designating the various points where samples of water should be collected for analysis and investigation in connection with the drainage canal litigation, and specifying the time when regular samples should be taken at said points. In order that some satisfactory plan of this kind can be devised, they are prepared to go to Chicago the latter part of next week, to meet representatives of the Sanitary Board. Will you please advise me whether next Thursday or Friday would be agreeable to have these gentlemen meet the Chicago gentlemen occupying similar positions, and where the meeting shall take place? I understand that Thursday or Friday would be most convenient.

I expect to leave here on next Thursday evening, and will thank you for your reply by Tuesday forenoon. If you cannot have it in my hands by that time through the mail, please wire me fully so that I may inform the parties here whom they are to meet at Chicago, at what place in Chicago, and the day and hour of the conference.

I desire simply to suggest one other thing in connection with this matter. There may be exigencies when samples of water should be taken without delay. For example, immediately after a severe storm or freshet, or the like. In such case, it would be impracticable to first notify your parties, or to have your parties, if they should like to take samples under such circumstances, to notify us, for the delay involved might render it impossible to take the samples within the necessary time to ascertain results under peculiar conditions. It is, therefore, to be understood, that while every effort will be made to take *regular* samples at fixed times and places, either party shall be at liberty to take samples under conditions such as I have referred to without previous notification.

Very truly yours,

(Signed) B. SCHNURMACHER,
City Counselor.

(EXHIBIT "E.")

(COPY.)

August 31, 1901.

Hon. B. Schnurmacher, City Counselor, St. Louis, Mo.:

Dear Sir—In reply to your favor of the 30th inst., I desire to say that I have to-day consulted with the Sanitary District, and have arranged for meeting of the chemists and bacteriologists representing the different parties, at the rooms of the Sanitary Board in the Security Building, Chicago, at ten a. m. on Friday, the 6th of September.

If anything should occur in the meantime that would necessitate a change in the date of the meeting, I will promptly notify you by wire.

Thanking you for your prompt action in this matter, I remain,

Yours very truly,

(Signed) H. J. HAMLIN,
Attorney General.

FILE COPY.

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Clerk.

IN THE

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OCTOBER TERM, 1902.

THE STATE OF MISSOURI,
Complainant,
vs.
THE STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO,
Defendants.

In Equity. No. 4.
Original.

STIPULATION AS TO TAKING TESTIMONY.

STATE OF MISSOURI
By EDWARD C. CROW,
Attorney General of Mo.
SAMUEL B. JEFFRIES,
Asst. Atty. Genl. of Mo.
H. J. HAMLIN,
Atty. Genl. of Illinois.
JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Attys. Sanitary Dist. of Chicago.

CHARLES W. BATES,
WM. F. WOERNER,
Of Counsel for Complainant.

J. W. Steele & Co., Prs., 18 N. Third, St. Louis.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE STATE OF MISSOURI, Complainant, vs. THE STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, Defendants.	In Equity. No. 4. Original.

STIPULATION AS TO TAKING TESTIMONY.

Now come the complainant and defendants in the above entitled cause, by their respective attorneys and by agreement submit to this honorable court that the orders heretofore made in this cause as to the time in which and for which the respective parties are required to take and complete the taking of their testimony be set aside, and that the following order in relation thereto be made :

1st. It is hereby ordered by the Court that the orders heretofore entered in this case in reference to the time in

which and for which the respective parties are required to take and complete the taking of their testimony be set aside.

2nd. That the complainant having hereto-fore taken testimony from February 17th to the 28th inclusive, may resume the taking of testimony on March 9, 1903, and shall conclude on or before the 21st day of April thereafter.

3rd. That the defendants may begin the taking of testimony in the City of Chicago in the State of Illinois, on the 23rd day of April, 1903, and shall conclude on or before the 19th day of June, thereafter.

4th. That thereafter rebutting testimony on behalf of the Complainant may be taken at such time and place as counsel for complainant may designate, such rebutting testimony to be concluded on or before the 26th day of June, 1903.

5th. That the defendants shall then conclude by taking any further testimony they may desire in rebuttal on or before the 3rd day of July, 1903, at which time all the testimony in the cause shall be concluded, unless the counsel on both sides shall mutually agree to a further extension of time for concluding the taking of testimony, and such agreement, if made, shall have the same effect as an order made by the Court.

6th. Either party may use any time in taking rebuttal testimony, not exceeding ten days in all, which may not be used by them in taking testimony in chief, and in that event the dates for beginning and concluding the taking of testimony by the respective parties, as set forth above, shall be changed accordingly.

Both parties to this stipulation hereby waive formal notice of the times and places for beginning and concluding

the taking of testimony as provided in the foregoing order, if made by the court.

STATE OF MISSOURI

By EDWARD C. CROW,
Attorney General of Mo.

SAMUEL B. JEFFRIES,
Asst. Atty. Genl. of Mo.

H. J. HAMLIN,
Atty. Genl. of Illinois.

JOHN G. DRENNAN,
WILLIAM M. SPRINGER,
Attys. Sanitary Dist. of Chicago.

CHARLES W. BATES,
WM. F. WOERNER,
Of Counsel for Complainant.